

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiffs,

v.

JEFFREY R. ARENBURG,

Defendant.

**MOTION, AFFIRMATION
& CERTIFICATE OF SERVICE**

Docket No. 08-CR-90

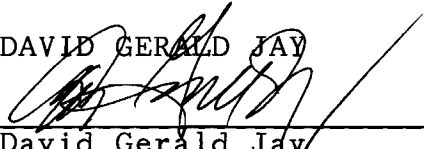
MOTION

Defendant, above named, by standby counsel, DAVID GERALD JAY, respectfully moves the Court for an Order as follows:

1. Directing that a new trial be held upon the grounds that the interest of justice requires such relief.

DATED: Buffalo, New York
May 27, 2008

DAVID GERALD JAY



David Gerald Jay
Standby Counsel for Defendant
69 Delaware Ave., Suite 1103
Buffalo, NY 14202
(716) 856-6300

TO: TERRANCE P. FLYNN
United States Attorney
Attn: Aaron J. Mango, AUSA
138 Delaware Avenue
Buffalo, NY 14202

AFFIRMATION

DAVID GERALD JAY, an attorney at law, pursuant to 28 U.S.C. § 1746(2), declares under the penalty of perjury that the following is true and correct:

1. I am standby counsel appointed for the Defendant in

the above-entitled action and make this affirmation in support of the within motion requesting a new trial pursuant to Rule 33.

2. The trial in this matter was conducted on May 20-21, 2008.

3. During Defendant's opening statement, he lapsed into references to what can be termed the classic signs of a paranoid thought process, ideas such as grand conspiracies, thought projection by external forces and alien control of human behavior. Surely the Court, upon objection, halted his forays into these areas, however, the stage was set for what was to come.

4. Cross-examination of the government's witnesses was not only useless, it was bizzare, to say the least. Each fact witness was interrogated as to their knowledge of the "fact" that the Defendant's thoughts were being broadcasted to the world, the further "fact" that the MGM organization was behind this vast conspiracy and the further "fact" that they, the jury, was also being controlled and that they should be wary of these problems.

5. Assuredly, Standby counsel has no role in the conduct of a trial. We must sit idly by, grit our teeth and give such assistance to a pro se defendant as such person requests. Now that the trial is completed, it is the opinion of this standby counsel that, as an officer of the Court, it is my

overarching duty, beyond any duty of loyalty to the defendant, that my observations be brought to the attention of the Court, so that steps can be taken to avoid a jurisprudential disaster and grossly unfair result.

6. In its simplest terms, the trial conducted last week was not a trial at all. It was an excursion into the mind of Mr. Arenburg, a mind that is ill and in need of medical assistance. He may have been able to proceed pro se when Magistrate Judge Schroeder conducted his inquiry on April 3; however, he was not fit to proceed on May 21-22. Government counsel put it succinctly when it moved to stop the trial, suggesting that the defendant was making a farce out of the proceedings.

WHEREFORE, affiant requests that defendant be granted a new trial, pursuant to Rule 33, under all the facts and circumstances.

Dated: Buffalo, New York
May 27, 2008



David Gerald Jay

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2008, I electronically filed the annexed Motion with the Clerk of the District Court, utilizing its CM/ECF system, which would then electronically notify the following CM/ECF participant in this case:

Terrance P. Flynn, United States Attorney, Attn: Aaron J. Mango, AUSA.

I further certify that on May 27, 2008, I served a copy of said Motion upon the following party by depositing same in a postal facility maintained by the United States Postal Service at Buffalo, New York:

Jeffrey R. Arenburg, Niagara County Jail, P.O. Box 496, Lockport, New York 14095-0496.

Dated: Buffalo, New York
May 27, 2008



David Gerald Jay